

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA**

Friedrichs Harris, Administrator of the  
Estate of Evan M. Harris, deceased,

Plaintiff,

v.

Civil Action No. 2:16-cv-46  
Judge Bailey

Q & A Associates, Inc.  
Angela Shockley, Individually,  
Keith Bishop, Individually,  
Matthew Shockley, Individually,  
Sandy Schmiedeknecht, Individually, and,  
Tammy Robbins, Individually,

Defendants.

**PLAINTIFF'S OBJECTION TO DEFENDANTS' RULE 26(a)(3) DISCLOSURE OF TRIAL EXHIBITS**

NOW COMES Plaintiff, by and through his attorney, David A. Sims, and hereby files  
the within Objections to *Rule 26(a)(3) Disclosure of Trial Exhibits* as follows:

**Defendants' Proposed Exhibit #11.**

Plaintiff objects to Defendants' Proposed Exhibit #11 titled "photos." Defendants' do not specify the substance of the photographs that Defendants seek to admit into evidence. One of the purposes of the discovery process under our Rules of Civil Procedure is to eliminate surprise. *McDougal v. McCammon*, 455 S.E.2d 788, 795-796 (W.Va. 1993). Furthermore, trial by ambush is not contemplated by the Rules of Civil Procedure. *Graham v. Wallace*, 588 S.E. 2d 167, 184 (W.Va. 2003). Here, Defendants' fail to give any indication as to the photographs they wish to use as evidence. Permitting the admission of *any* potential photograph into evidence, without previously disclosing the substance of said

photograph to Plaintiff's Counsel, would constitute a trial by ambush. Without knowledge of the photographs' substance, Plaintiff does not have adequate notice of the evidence Defendants seek to admit. As a matter of fairness, Plaintiff must have such notice to properly prepare for the case. Otherwise, Plaintiff would be unfairly surprised, which is what the discovery process is meant to eliminate.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to sustain Plaintiff's' objection to *Defendants' Rule 26(a)(3) Disclosure of Trial Exhibits*.

Respectfully submitted,

Friedrichs Harris, Administrator

s/David A. Sims

By:

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David A. Sims (#5196)  
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**CERTIFICATE OF SERVICE**

I David A. Sims as counsel for Plaintiff do hereby certify that I served PLAINTIFF'S OBJECTION TO DEFENDANTS' RULE 26(a)(3) DISCLOSURE OF TRIAL EXHIBITS by CM\ECF counsel for Defendants:

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Dated at Vienna, West Virginia on this 24<sup>th</sup> day of May 2018.

Friedrichs Harris, Administrator  
By counsel,

/s/David A. Sims

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